

The Riverside Church in the City of New York and International Union of Operating Engineers Local 94, 94A, 94B, Petitioner and Local 241, Transport Workers Union, AFL-CIO, Petitioner. Cases 34-RC-1075 (formerly 2-RC-21107) and 34-RC-1076 (formerly 2-RC-21109)

December 11, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioners' requests for review of the Regional Director's Decision and Order.

The Petitioners' requests for review of the Regional Director's Decision and Order are denied as they raise no substantial issues warranting review. Pertinent portions of the Regional Director's Decision and Order is attached as an appendix. In denying review, however, the Board notes that even assuming *arguendo* that part of the Employer's operations are commercial in nature, and that revenues from such commercial operations are more than a de minimis portion of the Employer's revenues, the Board agrees with the Regional Director's decision that assertion of jurisdiction is unwarranted as the Petitioners have not established that the petitioned-for employees spend a substantial amount of their time in activities related to the commercial portions of the Employer's operation. Compare *Faith Center—WHCT Channel 18*, 261 NLRB 106 (1982); *World Evangelism*, 248 NLRB 909 (1980).

APPENDIX

2. Both Petitioners herein seek to represent a unit of approximately 30 service and maintenance employees employed by the Employer.² Contrary to the Petitioners, the Employer contends that because it is a church, the Board should decline to assert jurisdiction and dismiss the petitions.

The Employer is a nonprofit corporation affiliated with the American Baptist Churches and the United Church of Christ. The Employer's sole facility appears to be a single structure which occupies two city blocks at 490 Riverside Drive in upper Manhattan, New York City. Included within this facility is 300,000 square feet of space consisting of a main sanctuary (nave), a 20-story building (the tower) and an 8-story building (the administrative wing). Located throughout the facility are five smaller chapels, the Employer's administrative offices (all of which are located in the 8-story wing), a homeless shelter, a food pantry, a cafeteria, a gift shop, a theater, an assembly hall, recreation halls, gymnasiums, choir rooms, classrooms, workshops, locker facilities, boiler rooms

²The petitioned for unit consists of 10 custodians, 2 electricians, 5 or 6 maintenance mechanics, an unspecified number of mechanics' helpers, 2 carpenters, an unspecified number of plumbers, 1 painter, and 5 garage attendants.

and storage areas. Situated beneath the 8-story wing is an underground parking garage.

The record clearly establishes, and the Petitioners do not dispute, that the Employer is a religious institution with a stated mission that "worships, witnesses and works for the advancement of the ideals of the gospel." In connection with its religious mission, the Employer provides regular worship services, conducts weddings, funerals, and baptisms, and provides Christian education for adults and children. It also engages in various social service functions, such as providing food, clothing, and shelter to the needy.

The Employer's congregation consists of 2000 members who are required to profess faith in Jesus Christ. The congregation elects 26 of its members to 2-year terms on a Church council. The council sets the Employer's policies in a manner similar to a board of directors of a corporation. The council is not responsible for hiring and directly supervising the seven ministers employed by the Employer, including Senior Minister James Forbes, Executive Minister David Dyson, and Director of Finance and Administration Charles Price. Also reporting to the council are five entities described as "commissions": property and finance, Christian education, membership and parish life, mission and social justice, and worship. Each commission is headed by an elected chairperson who is a member of the council. Reporting to the five commissions are numerous committees and subcommittees. The personnel department, which oversees the hiring of all employees, reports directly to the Director of Finance and Administration. Also reporting directly to the Director of Finance and Administration is Facilities Manager Rollie Saunders, who directly supervises all of the employees in the petitioned-for unit. The Employer maintains a three-step appeal procedure for use by all employees, including those in the petitioned-for unit, in the event of a layoff or termination. The initial appeal goes to the employees' immediate supervisor, then to the director of finance and administration, and finally to the senior minister and/or to the executive minister.

The Employer's entire facility is open to the public. Thus, members of the congregation, employees, tourists, and other visitors may park in the garage, eat in the cafeteria, tour the building, shop in the gift shop, and attend various presentations such as musical programs and religious services. The Employer also leases a small amount of space to profit and nonprofit entities.³

³Amen Communications, Inc. leases 800 square feet on the 19th floor of the tower at a cost of \$2000 per month; the Orpheus Chamber Orchestra leases 1800 square feet on the 11th floor of the tower at a cost of \$2000 per month; Irene Pluntky-Goedecke, who teaches jewelry classes, leases 446 square feet in the arts and craft room in the tower at a cost of \$333 per month; and J. Nex, Inc. and Motorola each lease an unspecified amount of space on the roof of the tower for their antennae, at a cost of \$600 per month. The Employer also leases an unspecified amount of its meeting and worship facilities to the following nonprofit organizations, from which it derives a total income of approximately \$1000 per month: Adult Children of Alcoholics, Narcotics Anonymous, Alcoholics Anonymous, Riverside Choral Society, Ethiopian Orthodox Church, and the Mothers and Father's Workshop.

Two floors in the eight-story wing are utilized by the Employer to teach English to foreign students pursuant to an \$800,000-a-year grant from the State of New York. An unspecified amount of space is utilized by the Employer for the operation of the Riverside Church Weekday School, a preschool program for 100 children between the ages of 2-1/2 and 6. The Employer's cafeteria is operated by a food service company pursuant to a contract with the Employer. The record does not reflect the specific cost of this contract or the specific amount of money, if any, which the Employer derives from its operation. The record reveals that for the 1989-1990 fiscal year, the Employer had total revenues of \$7,470,000, \$609,000 of which were derived from "building and garage rentals." Of the latter figure, \$78,000 represents income from the building rentals described above in footnote 2. The remaining \$531,000 appears to represent income from garage rentals. The record, however, does not indicate what percentage of this figure is derived from individuals who are not attending any religious functions offered by the Employer. Income for the 1990-1991 fiscal year is expected to be lower in all categories.

The employees in the petitioned-for unit, except for the garage attendants who spend all of their working time in the garage, work throughout the Employer's facility performing routine maintenance and cleaning functions. The record does not reflect the percentage of each employees work time that is spent working in the leased areas of the facility. There is no requirement that these employees profess to any particular religious beliefs or that they be members of the congregation, nor do they receive any religious indoctrination or training as part of their employment.

Generally, the Board will not assert jurisdiction over non-profit religious organizations. *Motherhouse of the Sisters of Charity*, 232 NLRB 318 (1977); *Board of Jewish Education of Greater Washington, D.C.*, 210 NLRB 1037 (1974). However, the Board will assert jurisdiction over those operations of such organizations which are commercial in nature. *First Church of Christ, Scientist*, 194 NLRB 1006 (1972); *World Evangelism*, 248 NLRB 909 (1980). In the latter cases, in deciding whether to assert jurisdiction, the Board has applied the following twofold test: (1) Is the employer engaged in activities which are commercial in the generally accepted sense? and (2) do the employees sought to be represented allocate a substantial amount of time to activities which are commercial in nature? In *Faith Center-WHCT Channel 18*, 261 NLRB 106 (1982), the Board reaffirmed that it will not

assert jurisdiction over religious institutions which operate "in a conventional sense using conventional means," and then declined to assert jurisdiction over an "electronic church of the air" which relied solely upon its extensive broadcasting facilities to accomplish its religious mission. In so doing, the Board was not persuaded by the fact that the broadcast technicians in that case had no religious connection to the employer's religious mission and spent all of their working time performing clearly secular tasks, and found, in effect, that the secular nature of their work was necessary to effectuate the employer's religious mission.

Based on the foregoing and for the reasons noted below, I find that it will not effectuate the policies of the Act to assert jurisdiction in this matter. In my view, the service and maintenance employees in the petition-for unit are virtually indistinguishable from the broadcast technicians in *Faith Center*, inasmuch as they engage in clearly secular tasks without which the Employer would be unable to accomplish its religious mission.⁴ The Employer is in all other respects a church operating "in a conventional sense using conventional means." In this regard, although the Employer engages in some activities which are commercial in nature by its rental of space in its garage and building to other religious and nonreligious organizations and individuals, the income derived therefrom represents de minimis portion of the Employer's annual revenues, and appears to be ancillary to, and an extension of, the Employer's religious objectives. See *Faith Center*, supra at fn 4.

Accordingly, I shall grant the Employer's motion and dismiss the petitions herein.

ORDER

It is ordered that the petitions filed in this matter be dismissed.

⁴In this regard, the record clearly establishes that, except for the garage attendants, the employees in the petitioned-for unit work through the Employer's facility and do not allocate their time in any respect between those activities which service the Employer's clearly religious operations and those which service the rented space. As for the garage attendants, they clearly spend all of their working time on the admitted commercial activities of the garage. However, inasmuch as the garage is ancillary to the Employer's religious mission, jurisdiction over this Employer limited to those five employees is clearly unwarranted. See *Faith Center*, supra; *Motherhouse of the Sisters of Charity*, supra at fn. 6.